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SUMMARY RECORD OF THE 40th MEETING

Chairman: Mr. LAMPTEY (Ghana)

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The meeting was called to order at 10.50 a.m.

AGENDA ITEM 157: QUESTION OF CRITERIA FOR THE GRANTING OF OBSERVER STATUS IN THE GENERAL ASSEMBLY (continued) (A/C.6/49/L.16)

Draft decision A/C.6/49/L.16

1. Mr. CHATURVEDI (India), speaking as Chairman of the Working Group on the question of criteria for the granting of observer status in the General Assembly, presented an oral report. The Working Group had held three meetings between 7 and 11 November 1994, in the course of which it had conducted an initial review of the various suggestions and proposals of a substantive and procedural nature concerning the criteria which the General Assembly might follow in granting observer status. The Working Group had come to the conclusion that any decision on the matter had to be firmly anchored in the past practice of the General Assembly, and had therefore requested the Secretariat to gather background material on the relevant practice of the General Assembly.

2. In the note prepared by the Secretariat in accordance with that request, it was pointed out that there were no provisions in the United Nations Charter or in the rules of procedure of the General Assembly relating to the granting of observer status in the General Assembly. The policy followed by the Secretary-General in that respect since 1946 with regard to non-member States, and the procedure followed by the General Assembly in inviting organizations and other entities to participate in its work in the capacity of observer, were also described. The note was accompanied by 25 annexes referring to 21 intergovernmental organizations and four other organizations or entities which had been accorded observer status by the General Assembly, including the text of the relevant resolution and the material supporting the requests.

3. From the note prepared by the Secretariat, it was apparent that, in the overwhelming majority of cases, observer status in the General Assembly had been granted to States and intergovernmental organizations. In the case of the latter, it was also apparent that a certain link existed between the activities of the organizations concerned and the fields of interest of the General Assembly. It was also indicated in the note that there were only a very few cases in which the General Assembly had granted observer status to political entities other than States or to non-governmental organizations. The Working Group had felt that in general those cases were too exceptional to provide a basis for the formulation of general criteria. Some delegations had felt that such cases demonstrated that it was possible for the General Assembly, occasionally, to accord observer status to entities other than States and intergovernmental organizations, because of the contribution they could make to its work.

4. Bearing it in mind that it was within the General Assembly's powers to accord ad hoc observer status to any entity of its choice, the Working Group had reached the conclusion that the Committee should recommend to the General Assembly that the granting of observer status in the General Assembly should in future be confined to States and to those intergovernmental organizations whose

activities covered matters of interest to the General Assembly. The text of the draft decision to that effect appeared in document A/C.6/49/L.16.

5. The CHAIRMAN said that he took it that the Committee wished to adopt draft decision A/C.6/49/L.16 without a vote.

6. Draft decision A/C.6/49/L.16 was adopted.

7. The CHAIRMAN said that the Committee had completed its consideration of agenda item 157.

AGENDA ITEM 140: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (continued) (A/C.6/49/5; A/C.6/49/L.12 and A/C.6/49/L.18)

Draft resolution A/C.6/49/L.12

8. Mr. LAVALLE VALDES (Guatemala) said that his delegation wished to make an interpretive statement about draft resolution A/C.6/49/L.12, which had been adopted by the Committee at its previous meeting. In the report of the Secretary-General on cooperation between the United Nations and the Organization of American States (OAS) (A/49/450), there was a description of important joint political activities which had been carried out by the United Nations and OAS. Paragraphs 2 to 4 of that report, which he read out in part, referred to, inter alia, the International Support and Verification Commission, whose activities were related to the situation in Central America. However, paragraph 3 of the draft Declaration in document A/C.6/49/L.12, in listing the forms of cooperation between the United Nations and regional bodies, made no reference to joint activities of the type described in paragraphs 2 to 4 of document A/49/450.

9. It was true that the words "inter alia" used at the beginning of paragraph 3 of the draft Declaration indicated that the list that followed was not exhaustive. However, it was paradoxical that the draft Declaration, in paragraph 3, subparagraph (a) referred to modalities of cooperation which were at a much lower level than the joint activities, while the other two subparagraphs of the same paragraph were concerned with activities which, strictly speaking, did not constitute cooperation. His delegation was therefore concerned about the omission of any reference to the joint activities, which were eminently cooperative in nature, from the text of the Declaration, particularly in view of the possibility that the text could be interpreted to mean that the General Assembly wished to stress in that manner its disapproval, hesitation or reservations about those activities.

10. His delegation wished to note that, in its view, both paragraph 3 of the Declaration nor the Declaration as a whole should be interpreted to mean that there was any reservation on the part of the General Assembly about the activities which had been carried out jointly by the United Nations and OAS, of which Guatemala had been one of the beneficiaries.

Draft resolution A/C.6/49/L.18

11. The CHAIRMAN announced that the Federated States of Micronesia, Italy, Kenya, Maldives, Portugal, Spain and Uruguay had joined the sponsors of draft resolution A/C.6/49/L.18.

12. Mr. MUBARAK (Egypt), introducing draft resolution A/C.6/49/L.18, said that the text was based on previous resolutions of the General Assembly, with appropriate adjustments to take into account the progress achieved over the past year, and also the discussions of the Special Committee at its most recent session and the recommendations made by the Special Committee at that time.

13. In that respect, he wished to refer specifically to the last three preambular paragraphs and to operative paragraph 4, subparagraph (c), regarding the deletion of the "enemy-State" clauses in Articles 53 and 107 of the Charter of the United Nations. That question had initially been raised as a separate draft resolution submitted by Poland and circulated as document A/C.6/49/L.3. After broad consultations, it had been apparent that the general view was that the matter should be taken up in the main draft resolution on the report of the Special Committee and accordingly the sponsors of draft resolution A/C.6/49/L.3, after further consultations, had withdrawn that draft resolution.

14. He also drew attention to paragraph 4, subparagraph (d) concerning the question of cooperation between the United Nations and regional arrangements or agencies. In that respect the Special Committee, at its most recent session, had adopted a declaration, the text of which had been included in draft resolution A/C.6/49/L.12; that draft resolution had been adopted by consensus at the Committee's previous meeting. In conclusion, he said that it appeared that draft resolution A/C.6/49/L.18 enjoyed broad support and could be adopted without a vote.

15. Mr. KIM Jae Hon (Democratic People's Republic of Korea) said that his delegation had held extensive consultations with the sponsors of draft resolution A/C.6/49/L.18 to determine whether the final preambular paragraph and paragraph 4 (c) of the draft should be deleted. However, divergences of opinion on the question were such that no solution had been arrived at. His delegation therefore requested a separate vote on those paragraphs, and firmly opposed any discussion of the matter of deleting the articles of the Charter concerning "enemy states".

16. The reasons for that request were that, in the first place, issues regarding possible amendments to the Charter should be discussed together and not separately. In addition to the issue currently before the Committee, there were other proposals requiring amendments to the Charter, such as the question of increase in the membership of the Security Council.

17. Secondly, his delegation did not believe that the provisions of Article 107 and possibly also those of Article 53 had become obsolete. On the contrary, he believed that those rules were still relevant and valid. Japan, which had been one of the "enemy states", still had not atoned for the crimes against humanity which it had committed in the past. Nor had it undertaken in good faith not to repeat such acts. It was well known that Japan had perpetrated atrocities in

various parts of Asia and the Pacific. In particular, it had fabricated the Ulsa Five-Point Treaty, which had been neither signed nor recognized by the then Emperor Kojong of Korea, with the aim of colonizing by brute force the entire territory of Korea. The abuses and outrages committed by Japan had intensified during the Second World War, during which 200,000 people had been forced to be slaves of the Japanese army, 6 million had been subjected to forced labour, and 1 million had been murdered. In fact, every Korean family had endured suffering and want as a result of those crimes.

18. Nevertheless, Japan still refused to admit the illegality and immorality of the occupation of Korea and of the crimes it had committed in the past, which had constituted a threat to the peace and security of Asia and the rest of the world. Even at the present time, ministers and senior officials of the Government of Japan sought to justify the war in the Pacific, presenting it as a struggle for the liberation of the Asian countries. That clearly demonstrated their effrontery, and proved that Japan still harboured the ambition of aggression against and domination over Asian countries, including Korea.

19. The other States referred to in the "enemy state" articles of the Charter had settled their historical obligations; taking that into account, his delegation would not object to the relevant articles being amended in such a way that the new provisions would apply only to those countries.

20. Finally, he reiterated his request for a separate vote on the final preambular paragraph and operative paragraph 4 (c); his delegation would vote against those provisions and would abstain in the vote on the draft resolution as a whole.

21. Mr. MADEJ (Poland) said that his delegation opposed the motion for a separate vote. The entire text of the draft resolution contained in document A/C.6/49/L.18 had been approved at the informal meeting held on 17 November, which all interested delegations had been free to attend. Draft resolution A/C.6/49/L.3, sponsored by Poland and distributed on 12 October, had also contained provisions regarding the "enemy states", and the Democratic People's Republic of Korea had expressed no difficulties or doubts with respect to it. It was therefore surprising that not until 22 November had the Democratic People's Republic of Korea announced its decision to ask for a separate vote on those provisions.

22. He recalled that the text of draft resolution A/C.6/49/L.3 was an essential and integral part of draft resolution A/C.6/49/L.18, which had been produced after extremely full consultations, in a spirit of compromise, as a result of which draft resolution A/C.6/49/L.3 had been withdrawn on 18 November.

23. At the request of the representative of the Democratic People's Republic of Korea, a recorded vote was taken on the motion to vote separately on the final preambular paragraph and operative paragraph 4 (c) of draft resolution A/C.6/49/L.18.

24. The result of the vote was as follows:

In favour: Cuba, Democratic People's Republic of Korea, Sudan.

Against: Algeria, Argentina, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Belarus, Belgium, Bolivia, Botswana, Brazil, Brunei Darussalam, Bulgaria, Cameroon, Canada, Chile, Colombia, Congo, Costa Rica, Côte d'Ivoire, Cyprus, Denmark, Djibouti, Ecuador, Egypt, Ethiopia, Finland, France, Germany, Greece, Guatemala, Guinea, Guyana, Honduras, Hungary, Iceland, India, Indonesia, Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Latvia, Lebanon, Lithuania, Luxembourg, Malaysia, Maldives, Mali, Malta, Mauritania, Mexico, Mongolia, Morocco, Myanmar, Namibia, Nepal, Netherlands, New Zealand, Nigeria, Norway, Oman, Pakistan, Panama, Papua New Guinea, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Rwanda, Saudi Arabia, Senegal, Singapore, Spain, Sri Lanka, Suriname, Sweden, Thailand, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Yemen, Zambia, Zimbabwe.

Abstaining: Benin, China, Ghana, Haiti, Iran (Islamic Republic of), Mozambique, Swaziland.

25. The motion for a separate vote proposed by the Democratic People's Republic of Korea was rejected by 103 votes to 3, with 7 abstentions.

26. At the request of the representative of the Democratic People's Republic of Korea, a recorded vote was taken on draft resolution A/C.6/49/L.18.

27. The result of the vote was as follows:

In favour: Algeria, Argentina, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Belarus, Belgium, Benin, Bolivia, Botswana, Brazil, Bulgaria, Cameroon, Canada, Chile, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Denmark, Djibouti, Ecuador, Egypt, Ethiopia, Finland, France, Germany, Ghana, Greece, Guatemala, Guinea, Guyana, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lebanon, Libyan Arab Jamahiriya, Lithuania, Luxembourg, Madagascar, Malaysia, Maldives, Mali, Malta, Mauritania, Mexico, Mongolia, Morocco, Mozambique, Myanmar, Namibia, Nepal, Netherlands, New Zealand, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Papua New Guinea, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Rwanda, Saudi Arabia, Senegal, Singapore, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Syrian Arab Republic, Thailand, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Arab

Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Venezuela, Yemen, Zambia, Zimbabwe.*

Against: None.

Abstaining: Democratic People's Republic of Korea.

28. Draft resolution A/C.6/49/L.18 was adopted by 117 votes to none, with 1 abstention.

29. Ms. WILMSHURST (United Kingdom) said it was regrettable that a vote had been held on the draft resolution. That vote should not affect the practice whereby draft resolutions on the agenda item under its decision were adopted without a vote, and the Special Committee should continue to operate on a consensus basis. That practice was vital if the Special Committee was to function successfully.

30. Mr. YOUSIF (Sudan) said that his delegation had voted for the first motion out of solidarity with the Democratic People's Republic of Korea. It had been a procedural matter; any country had the right to request a separate vote on a part of a proposal or amendment. On the substantive question, he had voted for the draft resolution because, as he had already stated in the Sixth Committee, his delegation considered that the concept of "enemy states" should be removed from the Charter of the United Nations.

31. Ms. SAEKI (Japan) said that her delegation wished to place on record the fact that, thanks to considerable efforts on the part of a number of delegations, a consensus had been reached on the important resolution it had just adopted. It was regrettable that, despite the goodwill shown by others, one Member State had failed to respect the consensus, with the sole object of indulging in a meaningless political propaganda exercise.

32. Mr. XU Guangjian (China) said that his delegation had voted for draft resolution A/C.6/49/L.18. The paragraph concerning "enemy states" no longer reflected the modern world and was not the only article of the United Nations Charter which was obsolete. The alteration of such articles should be done with the greatest caution.

33. Mr. HAMAI (Algeria) said that his delegation had voted in favour of draft resolution A/C.6/49/L.18 because it was essentially a procedural text relating to the mandate of the Special Committee's next session. His delegation had no objection to the inclusion in the agenda of the Special Committee's next session of the question of the "enemy-State" clause, which his delegation considered obsolete. While it was true that all questions relating to amendments to the Charter were considered in a global and integrated context by the open-ended

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* The delegation of Paraguay subsequently informed the Committee that it had intended to vote in favour of draft resolution A/C.6/49/L.18.

working group, on the question of equitable representation on and increase in the membership of the Security Council and other related questions, which had been established in accordance with General Assembly resolution 48/26, his delegation would have preferred that all those questions should be referred to the Special Committee for legal analysis, since there was no logical reason to make distinctions between one questions and another. Although his delegation had accepted the current wording of draft resolution A/C.6/49/L.18 in order to preserve the consensus, it was prepared to defend its position at an appropriate time in the Special Committee.

34. Mrs. CUETO (Cuba) said that her delegation had participated actively in the preparation of draft resolution A/C.6/49/L.18. While it considered that the "enemy-State" clause and other clauses that constituted an amendment to the letter and spirit of the Charter should be considered together, her delegation had joined the consensus because it considered that, in general, the draft resolution was in the interest of many delegations. Nevertheless, Cuba had voted in favour of the motion to request a separate vote since, irrespective of any political motivation, all Member States had the right to do so from the point of view of procedure.

35. Mr. ORDZHONIKIDZE (Russian Federation) said that, although his delegation had voted in favour of draft resolution A/C.6/49/L.18, it regretted that the draft had not included the provisions proposed by the Russian Federation on cooperation between the United Nations and regional organizations. His delegation was confident that, at its next session, the Special Committee would pay special attention to that question. He also supported the current text with respect to the "enemy-State" clause. However, that did not mean that his delegation was in favour of other proposals to amend the Charter of the United Nations.

36. Ms. SAEKI (Japan), speaking in exercise of the right of reply, said that her delegation and other delegations present at the meeting considered it regrettable that, for the second time during the current session, countries' precious time and resources were being wasted on account of political propaganda that was completely out of place. The allegations made against Japan by the representative of the Democratic People's Republic of Korea were unfounded. The statements had been merely spiteful and intended as propaganda against Japan. As the Minister for Foreign Affairs had pointed out in his statement in the General Assembly on 27 September 1994, Japan intended to conduct a proactive foreign policy that would enable it to contribute to the future well-being of humankind. Japan was implementing that policy in the interests of international cooperation and in conformity with its Constitution, which prohibited the use of force as a means of solving international conflicts. Moreover, Japan had on many occasions reaffirmed its determination to ensure that the tragedies and suffering experienced by neighbouring States during the Second World War would not be repeated. Japan was determined to strengthen its relations with the countries of Asia and the Pacific on the basis of mutual confidence, and regretted the cynicism of the representative of the Democratic People's Republic of Korea, who was seeking to disrupt those relations.

37. With regard to the 1905 treaty, her delegation wished to reiterate that, bearing in mind the norms of international law prevailing at that time, her Government considered that the treaty had been valid.

38. Finally, she called upon the Democratic People's Republic of Korea to participate in a more positive manner in United Nations deliberations, including those of the Sixth Committee, instead of attempting to use the Organization as a sounding-board for propaganda.

39. Mr. KIM Jae Hon (Democratic People's Republic of Korea) said that with respect to the statements made by the representative of Japan in exercise of the right of reply, it was regrettable that Japan continued to refuse to acknowledge the illegality of its occupation of Korea. As his delegation had previously observed in the Sixth Committee, the 1905 treaty had no legal validity either in view of the domestic law of old Korea or in the view of the international law in force at that time (see A/C.6/49/5, annex).

40. At its fifteenth session, the International Law Committee had considered various questions, including draft articles on the law of treaties. During the discussion of article 35, dealing with personal coercion of representatives of States, there had been general agreement that acts of coercion or threats applied to individuals in order to procure the signature, ratification, acceptance or approval of a treaty, would necessarily justify the State in invoking the nullity of the treaty. In that regard, reference had been made to four instances of the alleged employment of coercion in order to procure the signature or ratification of a treaty, including the "Ulsa Five-point Treaty", which had been imposed on the Emperor of Korea and his ministers in 1905 to obtain their acceptance of a treaty of protection. There was absolutely nothing that Japan could gain by its continued reluctance to admit to acts committed in the past against humanity and the Korean people; history could not be erased. His delegation once again urged Japan not to resort to empty excuses to justify its past crimes against the people of Korea. Likewise, he called upon Japan to make reparations as soon as possible for those regrettable historical events.

41. The CHAIRMAN said that the Committee had concluded its consideration of agenda item 140.

AGENDA ITEM 143: CONVENTION ON JURISDICTIONAL IMMUNITIES OF STATES AND THEIR PROPERTY (continued) (A/C.6/49/L.14, L.20 and L.25)

42. The CHAIRMAN said that Austria had joined the sponsors of draft resolution A/C.6/49/L.20. He took it that the sponsors of draft resolutions A/C.6/49/L.14 and L.20 had agreed to withdraw their respective drafts in favour of draft resolution A/C.6/49/L.25.

43. Mr. MAIGA (Mali) said that there had not been enough time to reach a consensus in informal consultations, and it was the view of his delegation that consideration of the item should be deferred.

44. The CHAIRMAN suggested that the Committee defer its consideration of the item until its next meeting.

45. It was so decided.

AGENDA ITEM 137: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-SIXTH SESSION (continued) (A/C.6/49/L.5, L.6, L.8, L.22, L.24, L.26, L.27 and L.28)

46. Mr. LEGAL (France) said that his delegation had no objection to the Committee's deferral of consideration of the question of establishing an international criminal court until its next meeting. Nevertheless, he wished to give a brief introduction of the draft resolution contained in document A/C.6/49/L.24, which had been circulated and had been included in the agenda for the meeting. The document contained a negotiated text that attempted to include common points on which all delegations could agree in order to work together effectively to establish an international criminal court in the near future. His delegation was aware that the document was not entirely acceptable to the authors of the texts contained in documents A/C.6/49/L.5, L.6 and L.8, and it thanked the delegations that had made great efforts to find points of agreement, since the document was based on that criterion. Work so crucial and essential for the international community, international institutions and international criminal law must be conducted under the best auspices and in conditions that would result in the greatest number of ratifications as soon as possible. The merit of the text was that it allowed all delegations present to undertake jointly the elaboration of a draft statute for an international criminal court which, from the outset, would be able to operate efficiently and have the broad support of the international community. When the Committee took up its consideration of the item at its next meeting, it should give priority to document A/C.6/49/L.24, provided that the sponsors of document A/C.6/49/L.5 and L.6 agreed.

47. Mr. ROSENSTOCK (United States of America) said that his delegation considered that it was important to undertake that institutional exercise on the basis of the broadest possible agreement. His delegation had participated in the negotiations that had led to the introduction of draft resolution A/C.6/49/L.24, and considered that the text represented the broadest possible agreement on the item. After consulting with the other sponsors of draft resolution A/C.6/49/L.5, his delegation was prepared to withdraw it and wholeheartedly support the request that priority be given to draft resolution A/C.6/49/L.24 introduced by the representative of France.

48. Mr. STRAUSS (Canada) said that, after consulting with the other sponsors of draft resolution A/C.6/49/L.6, his delegation had decided to withdraw the draft resolution in order to facilitate a consensus on draft resolution A/C.6/49/L.24, which had been introduced by France.

The meeting rose at 12.05 p.m.